

DEPARTMENT OF ENVIRONMENTAL QUALITY

AGENCY POLICY STATEMENT NO. 6-2007

SUBJECT: Virginia Freedom of Information Act Compliance

REFERENCE: Virginia Freedom of Information Act (§ 2.2-3700 et seq.)

EFFECTIVE DATE: April 17, 2007



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I. PURPOSE:

This policy establishes procedures for assisting employees of the Department of Environmental Quality (hereinafter "DEQ") in complying with the Virginia Freedom of Information Act (VFOIA). It is intended for use in conjunction with the VFOIA.

II. BACKGROUND:

The VFOIA gives the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies in which the business of the people is conducted. Such access is provided to any citizen of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth according to the provisions of the law, regardless of the reason for the request. The provisions of the law will be liberally construed to promote an increased awareness by citizens of governmental activities and to afford every opportunity for citizens to witness the operations of government. Any exception or exemption from applicability shall be narrowly construed. In compliance with the VFOIA statute, DEQ will treat every written, electronic or oral request for records as a request under the VFOIA, whether or not that law is explicitly cited in the request. The VFOIA does not apply to requests made by individuals who are not citizens of the Commonwealth of Virginia. However, the agency will make every attempt to honor reasonable requests from outside the Commonwealth within a reasonable time period.

Whenever the General Assembly amends the VFOIA so that any portion of this policy is inconsistent with the amended law, this policy will be interpreted in a way consistent with the amended law. The responsibility for interpreting the provisions of these procedures belongs to the VFOIA

Officer in consultation with the Director of DEQ (hereinafter "the Director").

When records are requested from a public body pursuant to a subpoena, the Rules of the Supreme Court of Virginia, not VFOIA, apply. (Virginia Freedom of Information Advisory Council AO-05-03)

III. STATEMENT OF POLICY:

DEQ is committed to ensuring that the public has access to all agency information to which they are entitled under the VFOIA. We understand that an informed public can better assist us in our mission to protect and enhance Virginia's environment, and promote the health and well being of the citizens of the Commonwealth. The following are the details on how this policy is implemented.

IV. REQUIREMENTS:

A. What must be disclosed

1. Except for certain types of records explained in the following subsections or as otherwise provided by law, all records held by DEQ staff pertaining to DEQ business are considered official government records and are subject to mandatory disclosure under the VFOIA. Such records include but are not limited to the following: books, papers, letters, notes, data and databases, presentations, reports, forms, documents, meeting minutes, video and audio records, telephone logs, electronic mail transmissions, electronic data and databases, contracts, position descriptions, job classifications, payment records,¹ maps, charts, diagrams, or graphs. Any version of any such record, whether preliminary or final, shall be disclosed upon request. Such records may exist in any format, including but not limited to print, handwriting, facsimile transmission, photocopy, electronic computer file, film, audiotape, videotape, photograph, or transparency.

It is the policy of DEQ that all business e-mails be printed and properly filed by the appropriate custodian of the subject record before deletion so they can be available if requested under the VFOIA. Deleted e-mails may be retrieved for 30 days after deletion. If a request is made for copies of deleted e-mails, whether or not hard copies exist, the requester

¹ These include records of salaries for employees earning more than \$10,000 per year, per diem allowances, and reimbursement of expenses.

should be advised that their retrieval will require special technical procedures which will take time and will incur unusual costs. Otherwise, such requests should be handled under the standard procedures set out in this policy.

2. In some instances the Code specifically requires that certain information always be made available to the public on request. Such information includes:

- a. "Emissions data" as provided in §§ 10.1-1314 and 10.1-1314.1 means the information gathered by, or submitted to, DEQ regarding the amount of pollutants emitted by sources of air pollution;
- b. "Effluent data" as provided in § 62.44.21 means the information gathered by, or submitted to, DEQ regarding the amount of pollutants emitted by sources of water pollution; and
- c. Any other information required by law to be made available to the public.

B. What may be disclosed or withheld

Certain records are not subject to mandatory disclosure under the VFOIA. These may be disclosed or withheld at the discretion of the custodian of the requested records after consultation with the VFOIA Officer. If necessary, the VFOIA Officer will consult with the Director, or his designee, and the Office of the Attorney General (OAG) to determine the appropriate course of action.

Exclusions of general application to public bodies (§ 2.2-3705.1):

1. Personnel records containing information about identifiable individuals (§ 2.2-3705.1 (1));
2. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies and any other records protected by the attorney-client privilege (§ 2.2-3705.1 (2));²

² Such writings include (1) records (letters, memoranda, notes of meetings and telephone calls) in which DEQ personnel seek legal advice from the OAG, (2) any written advice received and (3) internal documents reflecting either such written advice or any oral advice received. Records may not be protected by the attorney-client privilege if they have been

3. Legal memoranda and other work products compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter which is properly the subject of a closed meeting under § 2.2-3711 (§ 2.2-3705.1(3));³

4. Any test or examination used, administered, or prepared for purposes of evaluation of any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion with DEQ, or qualifications for any license or certificate issued by DEQ (§ 2.2-3705.1(4));⁴

5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711 (§ 2.2-3705.1(5);

6. Vendor proprietary information software (§ 2.2-3705.1(6));

7. Computer software developed by or for a state agency (§ 2.2-3705.1(7)); and

8. Appraisals and cost estimates of real property subject to a proposed purchase, sale, or lease, prior to the completion of such transaction (§ 2.2-3705.1(8)).

Exclusions relating to public safety (§ 2.2-3705.2):

1. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the building code in obtaining a building permit which would identify specific trade secrets or other information, the disclosure of which would be harmful to the competitive position of the owner or lessee. Such information shall be exempt only until the building is completed and information relating to safety or environmental soundness of any building shall not be exempt from disclosure (§ 2.2-3705.2(2));

disclosed to third parties. The attorney-client privilege belongs to DEQ, not to the attorney, and can be waived through disclosure by the client to others. Questions about the application of the attorney-client privilege should be referred to the VFOIA officer who will, if necessary, contact the OAG.

³ This section includes, but is not limited to, any document specifically prepared at the request of the OAG.

⁴ The scoring key or any other document that would jeopardize the security of the test is also exempt from mandatory disclosure. Test scores, however, shall be disclosed. Any person who has taken an employment test shall be entitled to inspect all documents relative to his or her performance on the test.

2. Documentation or other information which describes the design, function, operation, or access control features of any manual or automated security system which is used to control access to or use of any automated data processing or telecommunications system (§ 2.2-3705.2(3)); and

3. Plans and information to prevent or respond to terrorist activity, the disclosure of which would jeopardize the safety of any person, including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes or other records; and (iii) engineering or architectural records, or records containing information derived from such records. The same categories of records of any governmental or nongovernmental person or entity submitted to a public body for the purpose of antiterrorism response planning may be withheld from disclosure if such person or entity in writing (a) invokes the protection of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records is necessary to meet the objective of antiterrorism planning and protection (§ 2.2-3705.2(4)).

Exclusions relating to administrative investigations (§ 2.2-3705.3):

1. Investigator notes, correspondence, and information furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resources Management. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of charging parties, persons supplying the information, or other individuals involved in the investigation (§ 2.2-3705.3(3));

2. Investigative notes, correspondence, and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.1-714 et seq.) (§ 2.2-3705.3(5)); and

3. Investigative notes, correspondence, and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute provided by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; or (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline (§ 2.2-3705.3(7)).

Exclusions relating to educational records and certain records of educational institutions (§ 2.2-3705.4):

1. Data, records, or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education in the conduct of or as a result of study or research on medical, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented (§ 2.2-3705.4(3)).

Exclusions relating to proprietary records and trade secrets (§ 2.2-3705.6):

1. Financial statements not publicly available that are filed with applications for industrial development financing in accordance with Chapter 49 (§ 15.2-4900 et seq.)(§ 2.2-3705.4(2)); and

2. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992 (§ 2.2-3705.6(4));⁵

Exclusions regarding records of specific public bodies and certain other limited exemptions (§ 2.2-3705.7):

1. Working papers and correspondence of the Office of the Governor, Lieutenant Governor, the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or other chief executive officer of any political subdivision of the Commonwealth, or the president or other chief executive officer of any public institution of higher education (§ 2.2-3705.7(2));

2. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions, and provisions of the siting agreement (§ 2.2-3705.7(9));

3. Records containing information on the site-specific location of rare, threatened, endangered, or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archeological sites if disclosure would jeopardize the resource (§ 2.2-3705.7(10)); and

⁵ A 1992 amendment deleted "authorized disclosure" and "confidential information."

4. Records of DEQ, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the Director of the agency or his designee. This shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred, or similar documents (§ 2.2-3705.7(16)). See attachment E for supplemental enforcement guidance.

Exclusions regarding criminal records (§ 2.2-3706):

1. Complaints, memoranda, correspondence, case files or reports, witness statements, and evidence related to a criminal investigation or prosecution, other than criminal incident information as defined in § 2.2-3706, subsection A (§ 2.2-3706.F(1)).

Exclusions to any other records which may be withheld from mandatory disclosure under § 2.2-3705.1- .7 and § 2.2-3706.

DEQ shall honor the confidentiality determinations of other governmental agencies of the Commonwealth or of agencies of federal or local government only if confidentially is required by state or federal law. If another agency transmits to DEQ a record which that agency has exempted from disclosure but which is not required to be kept confidential under law, DEQ shall make its own determination of whether the record in question qualifies for an exemption before exempting that record from disclosure.

C. What must be withheld

1. The VFOIA does not mandate the withholding of any public record. Some records subject to mandatory withholding fall under other laws or regulations as follows:

a. The Air Pollution Control Law states that any information, **except emission data**, as to secret processes, formulae, or methods of manufacture or production shall be kept confidential (§§ 10.1-1314 and 1314.1). The Regulations for the Control and Abatement of Air Pollution further articulate this principle (9 VAC 5-170-60, "Availability of Information"), and it is the responsibility of the source providing

confidential information, not that of DEQ, to identify the information as confidential and seek DEQ's acquiescence in that designation. DEQ is responsible for keeping such designation confidential;

b. The Water Pollution Control Law states that any information, **except effluent data**, as to secret formulae, processes, or secret methods shall be kept confidential (§ 62.1-44.21). It is the responsibility of the source providing confidential information, not that of DEQ, to identify the information as confidential and seek DEQ's acquiescence in that designation. DEQ is responsible for keeping such designation confidential; and

c. DEQ will withhold information claimed confidential [U.S. Code Title 42, Subchapter III, Section 11044(a)] to the extent required by the Superfund Amendments Reauthorization Act (SARA) Title III statute.

2. Certain records deemed confidential, limited distribution, or restricted use by other law or regulation. The custodian should consult with the VFOIA Officer before withholding any information.

3. DEQ will use its best efforts to identify and designate materials it receives as confidential upon adequate prior written notice from the person providing those documents. But in the event of error, and even as to those documents so designated, if DEQ receives a request under FOIA which covers those documents, their exempt or non-exempt status will be examined under the provisions of FOIA itself, as well as any other relevant law by the records custodian, in consultation with the VFOIA Officer, if necessary.

D. Nonexistent records

No DEQ coordinator is required to create or prepare a particular record if it does not already exist. This includes the need to abstract or summarize information, to provide records if those records do not exist at the time of the request, to provide records that are not in the coordinator's custody at the time of the request, or to convert a record from one form into another. The coordinator shall, however, make a reasonable effort to reach an agreement with the requester concerning the production of the requested records. For electronic databases, the excision of exempt fields of information from an electronic database or the conversion of data from one available format to another shall not be deemed the creation, preparation or compilation of a new public record.

V. PROCEDURES:

A. Records disclosure procedures

1. Requests for records

If a citizen of the Commonwealth of Virginia wishes to inspect or be provided with copies of any DEQ record, the request should be made to the FOIA officer or to one of the agency coordinators (Attachment A). The FOIA officer or the coordinator of the requested records can request that he or she issue his or her request in writing. Should the requester decline to make a written request or the coordinator choose to do so, a verbal request shall be accepted. Such requests shall be documented in writing by the coordinator to include the following: name and legal address of the requester, information requested and the date the request was received (Attachment B). This request must be phrased with reasonable specificity (§ 2.2-3704.B). Facsimile requests are acceptable; no original signature is necessary for a request to be valid. The request does not have to refer specifically to the VFOIA in order to be covered by the law and by this policy.

2. Responses to requests for records

An initial response must be sent to the requesting party within five workdays of the agency's receipt of the request. "Forwarding" or "receiving" a FOIA request to or from another division/section/office of DEQ does not change the date for which a response is due. Failure to respond in one of the following ways may be deemed a denial of the request and therefore a violation of the law.

Within five workdays after receipt of the request (not counting the date of receipt) by DEQ, the coordinator of the records requested shall respond in writing in one of the following ways:

a. If the cost of providing the records is less than \$10.00, the coordinator shall release the requested records within five workdays at no cost to the requester (Attachment D10);

b. If the cost of providing the records is \$10.00 or more, the coordinator shall inform the requester of the costs to be recovered in complying with the request (Attachment D3), shall process the request and shall await payment from the requester before proceeding with providing the records (Attachment D2);

c. If the cost of providing the records is determined in advance to likely exceed \$200.00, before continuing to process the request, the Agency may require the requester to agree to payment of a \$200.00 deposit (Attachment D9). This deposit will be credited toward the final cost of supplying the requested records. Upon receipt of the deposit, the coordinator shall process the request and shall await final payment from the requester before proceeding with providing the records (Attachment D2);

d. If the coordinator determines that it is not possible to provide the requested records, to determine the specific records requested, or to determine the cost of releasing the records within the five-day work period, he or she shall specify in writing the conditions that make a response impossible. The coordinator shall have an additional seven work days in which to provide one of the previous responses (Attachment D4 or D7) or make records available for inspection if acceptable to the requester (Attachment D8);

e. If the coordinator determines that the volume of the requested records is extraordinary; an extraordinarily lengthy search would be required to identify the records; or that their release within the additional seven work days would prevent his or her division, region, or office from meeting its operational responsibilities, he or she shall call the requester and attempt to reach an agreement on an extension of the time limit. If such an agreement can be reached, the coordinator shall mail the requester a letter confirming the arrangement (Attachment D5). If such an agreement cannot be reached, the VFOIA Officer shall discuss with the OAG the possibility of petitioning an appropriate court for additional time in which to respond. Any such discussion with the OAG must be held within sufficient time for any such petition to be filed before the statutory deadline expires and default occurs;

f. If the coordinator deems all or part of the requested records to be subject to mandatory withholding under section III C of this policy, the requester shall be notified. **The requester shall be provided with a list of the withheld documents, and the specific exemption which is claimed as to each category must be cited** (Attachment D6);

g. **If the coordinator deems all or part of the requested records to be subject to discretionary withholding under III B of this policy, or is unsure as to the appropriate action, he or she shall immediately consult with the VFOIA Officer.** If necessary, the VFOIA Officer shall contact the Director (or his designee), and the AGO to

ascertain the appropriate course of action. If all, or part of the requested records, are determined to be subject to withholding, the coordinator shall so inform the requester. **The requester shall be provided with a list of the withheld documents and the specific exemption, which is claimed as to each category must be cited.** The coordinator shall release that portion of the requested records not subject to withholding (Attachment D6).

h. If the requested records could not be found or do not exist in DEQ files, the coordinator shall so inform the requester. However, if the staff person or coordinator who received the request knows that another public body has the requested records, the response shall include contact information for the other public body (Attachment D11).

Any DEQ employee who receives a request for records which are in the physical possession of his or her division, region, or office shall **immediately** route that request to the appropriate VFOIA coordinator of the records for that division, region, or office. Any DEQ employee who receives a request for records which are not in the physical possession of his or her division, region, or office shall **immediately** route that request to the attention of the VFOIA Officer or the appropriate coordinator if known.

If the requester is not a citizen of Virginia, the response will explain that the legal requirements of the VFOIA do not apply (Attachment D1). In the case of an out-of-state firm representing a Virginia client, the coordinator will treat the request as one from a citizen of the Commonwealth.

The coordinator shall maintain a copy of the response cover letter or record of electronic response for at least three years following the date of the letter, as required by General Records Retention and Disposition Schedule No. 101 of the Virginia State Library and Archives. The attachments do not need to be maintained in the same file as the cover letter as long as they can be clearly identified in the cover letter and can be readily retrieved.

3. Form of release of requested records

a. Inspection of records

If the requester wishes to inspect the original records, he or she may do so during the regular working hours of the coordinator of those records at a time mutually agreed upon by the requester and the coordinator. The coordinator shall contact the requester confirming the arrangement and document appropriately. The coordinator

is not obliged to allow a requester to inspect records during an unannounced visit. The coordinator shall take all necessary precautions for the preservation and safekeeping of the records while they are being inspected, assigning an employee to monitor the inspection, if necessary. If the citizen wishes copies made of any of the inspected records, the coordinator may make such copies available according to the provisions specified below. The coordinator is not required to provide the requester with copies of the records at the time of the inspection visit. Under VFOIA no DEQ employee is required to interpret, describe, summarize, or answer questions for or from the requester or to any other person regarding the purpose or contents of any record produced for inspection or copying.

b. Copies of records

If the requester does not wish to inspect the original records but wishes to be provided with copies of the requested records, the requester may arrange to produce his own copies. If the custodian and requester agree, the coordinator will make copies of such records available within the statutory time limits, or an agreeable time period.

The coordinator is not required to have the records delivered to the requester by any means (mail, courier service, facsimile transmission, etc.) but may do so at his or her discretion. If the coordinator chooses not to have the records delivered to the requester, it shall be the requester's responsibility to obtain the records from the coordinator.

c. Request for large volumes of records

For large volume requests, the agency suggests that the requester inspect the records first. This would help to eliminate unwanted records by ensuring that the requester is receiving and paying for only the records asked for, resulting in a possible cost savings to the requester. If the records are voluminous, the agency may fulfill its obligations by allowing the requester to contract with a private copying service to produce the requested records. In such instances, however, steps must be taken to ensure that the integrity of the original records is retained. If a private copying service is used, direct payment to the company is the responsibility of the requester and the cost per page will not be assessed by DEQ.

4. Costs for provision of records_

Each DEQ coordinator shall recover the costs of providing the requested records when that cost is \$10.00 or more. This policy is designed to offset actual cost incurred by the agency in processing responses to information requests and is not necessarily full cost recovery. This cost includes accessing, duplicating, supplying, or searching for the requested records. The coordinator shall calculate the cost for complying with each request (Attachment B) and shall maintain that calculation in his file along with the request. The coordinator shall collect the cost at the time of, or before providing the records (Attachment D3). It is incumbent upon the coordinator to accurately calculate the cost of preparing the response. When reimbursement is requested, a copy of **Attachment B** shall be sent to DEQ's Fiscal Office.

The policy of recovering the costs associated with responding to FOIA requests will typically not be applied to other government agencies. However, the agency reserves the right to seek reimbursement or make other arrangements when costs become onerous.

Requesters shall be encouraged to reimburse the agency by check rather than cash. Cash payments can be accepted at the discretion of the Director, Regional Director or their designees. Checks should be made out to the **Treasurer of Virginia** and mailed to the Department of Environmental Quality, Receipts Control, Post Office Box 1104, Richmond, Virginia 23218, or the appropriate regional office. The Fiscal Office shall notify the coordinator when the check is received. Upon notification by the Fiscal Office of receipt of the check, the coordinator shall release the records. If the check is a deposit for providing records determined to likely exceed \$200.00, upon notification by the Fiscal Office of receipt of the check, the coordinator shall process the records.

The Agency may make reasonable charges for its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. The Agency shall not impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the agency.

Before processing a request for records, the coordinator may require the requester to pay any amounts owed to the agency for previous requests for records that remain unpaid 30 days or more after billing.

a. Photocopied records

DEQ's basic charge for photocopying existing paper records is 10 cents per 8 1/2" x 11" page. When the request involves hundreds of pages, the staff may estimate the pages using the formula, 2 inches equals 500 pages (1 inch equals 250 pages, etc.) which is based on the standard size of a ream of paper. This charge includes the cost of materials, equipment, and equipment maintenance. The cost of staff time expended in searching for, copying, and assembling the records is calculated separately and added to the basic charge, if applicable. The cost of packing and postage, if applicable, is also calculated separately and added to the basic charge.

b. Computer records

DEQ's charge for providing computer data in either electronic or paper format is \$25 per half-hour, with any portion of a half-hour being charged at the full, half-hour rate. This charge includes the cost of materials, equipment, equipment maintenance, and staff time expended in searching for, compiling, and printing the records or copying them onto a diskette.

If a database containing DEQ data is owned and operated by a consultant under contract to the Agency, the charge for providing the computer data in either electronic form or paper format is the cost to the Agency charged by the consultant.

c. Facsimile charges

DEQ's charge for providing records via facsimile is 10 cents per page. The number of pages is limited to 10 per request in order to leave the fax machine available for other use.

d. Staff time

DEQ's charge for staff time involved in retrieving, copying and assembling records pursuant to an information request shall be \$5.30/half-hour (\$10.60/hour). This is based upon the lowest potential salary for administrative support staff. The time shall be determined in half-hour increments. No staff time will be charged for the redaction of records or parts of records.

B. Assignment of records disclosure responsibilities

1. Custodians

a. Each director of a DEQ division or region is the *ex officio* custodian for the records in the physical possession of his or her division, region or office.

b. The Director of Administration is the custodian for DEQ records that do not fall under any of DEQ's divisions, regions or offices.

c. Each division and region *ex officio* custodian shall designate a coordinator and an alternate coordinator for his/her respective division, region or office to track requests that are received by that office to ensure compliance with the VFOIA and with DEQ policy, and consult with DEQ's FOIA Officer as needed. This designation shall be in writing and shall be filed with the VFOIA Officer.

d. Each employee is custodian of records, both paper and electronic, in his or her possession.

e. No custodian shall either disclose or withhold records subject to discretionary disclosure under Part III B without prior consultation with the VFOIA Officer.

2. Coordinators

a. Each coordinator shall receive information requests appropriate for their respective division, office or region.

b. Each coordinator shall track all received information requests to ensure compliance the VFOIA.

c. Each coordinator shall maintain a file of the information requests that they received and responded to, including the tracking system.

d. Each coordinator shall notify the VFOIA Officer of any failure to adhere to the VFOIA.

3. VFOIA Officer

The DEQ VFOIA Officer shall be appointed by the Director. DEQ's VFOIA Officer shall perform the following functions:

a. Update this policy as necessary in accordance with changes made by the Virginia General Assembly to the VFOIA or with other changes;

- b. Maintain a record of the requests for information submitted to DEQ under the VFOIA as well as the responses to those requests;
- c. Monitor the responses provided by DEQ's records coordinators to ensure that those responses conform to the VFOIA and the DEQ policy;
- d. Maintain a complete written record of DEQ's custodians, coordinators and alternate coordinators for VFOIA purposes;
- e. Provide copies of DEQ's VFOIA policy to all appropriate state boards and DEQ custodians as necessary;
- f. Report to the Director instances of non-timely response, unauthorized denial of access, or other violations of law or policy;
- g. Consult with the Director and, when necessary, the OAG to ascertain the appropriate course of action when the custodian deems all or a part of a requested set of records to be subject to discretionary withholding; and

h. Coordinate responses for multi-regional and multi-program requests to ensure compliance with the Virginia Code and related DEQ policies.

4. All DEQ employees

FOIA responses are time sensitive and required by law. If a FOIA is forwarded to you in error, inform the FOIA coordinator IMMEDIATELY. If, however, a FOIA request is appropriately forwarded to your division/section/office, then it is your responsibility to answer the request within the time lines established by the Virginia Freedom of Information Act and DEQ policy.

Every DEQ employee shall adhere to the procedures established in this policy and shall assist his or her custodian in complying with the provisions of the law.

Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of the FOIA. ((§ 2.2-3704.E)

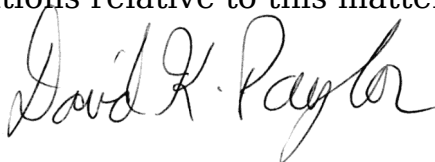
Any deviation to this policy must comply with the VFOIA and have prior approval of the VFOIA Officer.

C. Penalties for violation

Employees may be held personally responsible for violations of the Virginia Freedom of Information Act. The legal consequences for a DEQ employee's violation of the VFOIA are potentially severe, since any citizen denied his rights under the VFOIA has ready access to the courts via petition of mandamus or injunction. Civil penalties of \$250-\$1,000 may be levied against any DEQ employee who willfully and knowingly fails to comply with the law. For a second or subsequent violation, such civil penalty shall be not less than \$1000 or more than \$2,500(§ 2.2-3714).

VI. RECISION:

This document supersedes any previously issued documents except for regulations relative to this matter.



Approved: _____
Director, DEQ

Date: _____4/17/07_____

ATTACHMENTS

LIST OF CUSTODIANS AND COORDINATORS

	CUSTODIANS	COORDINATORS
NRO	Jeffery Steers	Terrie Knauf Tracey Buchanan (alternate)
PRO	Gerry Seeley	Jamilah Jennings Portia Callaway (alternate)
SWRO	Mike Overstreet	Reba Fleenor Angela Sells / Amanda Statzer (alternates)
TRO	Frank Daniel	Debby Arnold Laura Kramer (alternate)
VRO	Amy Owens	Diana Adams Dawn Wyvill (alternate)
WCRO	Steve Dietrich	Wanda Bowman Lorrie Smith (alternate)
SCRO	Tom Henderson	Jan Granzow Vickie Budge (alternate)
Division of Policy (alternate)	Kathy Frahm	Diane Harrison Diana Monroe
Office of the Director	Rick Weeks	Elsie Franklin Diane Harrison (alternate)
Office of Enforcement Coordination	Mike Dowd	Suzy Carlson Carl Ciccarelli (alternate)
Division of Administration	Valerie Thomson	Shinise Drew Evelyn Beard (alternate)
	Records Retention and Archives Jay Gutshall	

Division of Environmental Enhancement
Mike Murphy

Valerie Fulcher
Sheila Barnett

Division of Air Program Coordination
Jim Sydnor

Alma Banks
Monica Harvey

Division of Water Resource Management
Terry Wagner

Priscilla Royal
Mary Ann Massie (alternate)

Division of Water Program Coordination
Ellen Gilinsky

Sandi Jones
Debbie Hawkins (alternate)

Division of Waste Program Coordination
Karen Sismour

Cynthia Houchens
Edith Cornell/Jennifer Woodward
(alternates)

DEQ's VFOIA Officer
Diana Monroe

VIRGINIA FREEDOM OF INFORMATION ACTION FORM

1. DEQ COORDINATOR: _____ 2. PHONE NO. _____ 3. FAX NO. _____

PLEASE PRINT

4.

REQUESTER COMPANY ADDRESS PHONE NO.	 <p style="text-align: right;">VA CITIZEN OR REPRESENTING VA COMPANY? YES OR NO</p>
--	---

5. INFORMATION REQUESTED TO REVIEW AND/OR COPY (INCLUDE NAME, ADDRESS, PERMIT/ID NUMBERS) :

<p>6. DATE REQUEST RECEIVED OR FORM COMPLETED: Verbal/phone _____ Written _____</p> <p>7. DATE RESPONSE DUE _____ (5 working days after receipt)</p> <p>8. DATES OF RESPONSES: (INITIAL) _____ (FINAL) _____</p> <p>NUMBER OF DAYS TO RESPOND: (ATTACH RESPONSE LETTER, E-MAIL OR FAX CONFIRMATION, ETC.)</p> <p>9. EXTENSION REQUESTED: YES _____ NO _____</p> <p>REFERRED: YES _____ NO _____</p> <p>WITHHELD INFORMATION: YES _____ NO _____</p> <p>REASON:</p> <p>10. VISIT (CIRCLE ONE): SCHEDULED OR UNSCHEDULED</p> <p>DATE: _____ TIME: _____</p> <p>11. IF NO REIMBURSEMENT, NO. OF PAGES: _____</p>	<p>12. REIMBURSEMENT - (CHECKS PAYABLE TO: TREASURER OF VIRGINIA) NO. PAGES _____ X .10 (SINGLE-SIDED)=</p> <p>NO. FAX PAGES _____ X .10 =</p> <p>NO. 1/2 HOURS STAFF TIME _____ X \$5.30 =</p> <p>EMPLOYEE NAME(S):</p> <p>COMPUTER REPORTS: # 1/2 hrs _____ X \$25 =</p> <p>POSTAGE/SHIPPING: _____ =</p> <hr/> <p>TOTAL REIMBURSEMENT REQUIRED =</p> <p>COST CODE _____ FUND _____</p> <p>PROGRAM _____</p> <p style="text-align: center;"><u>FISCAL OFFICE INFORMATION</u></p> <table style="width: 100%;"> <tr> <td style="width: 50%;">DATE</td> <td style="width: 50%;">CHECK NO</td> </tr> <tr> <td>AMOUNT</td> <td>RCD. BY</td> </tr> </table>	DATE	CHECK NO	AMOUNT	RCD. BY
DATE	CHECK NO				
AMOUNT	RCD. BY				

MY SIGNATURE ACKNOWLEDGES THAT DEQ HAS ATTEMPTED TO PROVIDE ME WITH ALL OF THE AVAILABLE INFORMATION.

13.

REQUESTER'S SIGNATURE/DATE (OFFICE VISIT)

DEQ EMPLOYEE'S SIGNATURE/DATE

DEQ REVIEWER'S INITIALS _____

RESPONSE DOCUMENTATION

DATE : _____

DATE : _____

DATE : _____



DATE : _____



C

ATTACHMENT

VIRGINIA FREEDOM OF INFORMATION ACT RESPONSE FORM

DATE:

Dear _____:

The Department received your Freedom of Information request on . In order to respond to your request in an expeditious manner, we have developed this form letter for our use.

— Some/all of the information you have requested is not physically located at this office. Your response has been forwarded to the following departmental custodian for a response:

Custodian:
Phone No.

Please feel free to contact the custodian if you have any questions or wish to discuss your request in further detail. Any additional action by this office will be indicated below.

— The Department has reviewed your request and determined it is not specific enough for us to identify exactly what records you are requesting. Please submit a new request, specifying exactly what information you would like to receive/inspect.

— Attached please find the information you requested. Because the time

expended and the number of copies were minimal, there were no costs associated with providing you the information.

— The Department has conducted a review of our files and determined the information you requested cannot be found or does not exist in DEQ files.

— The Department reviewed our files and determined there are approximately _____ records available. Because of the volume of material, we are requesting you visit the office to evaluate the information. You may then copy any records you would like. Any associated charges will be in accordance with our reimbursement policy.

— The Department's policy is to recover the cost of providing information, when that cost is \$10.00 or more (staff time @ \$5.30/1/2 hour, including accessing, duplicating, supplying and searching for the requested records, 10 cents per page and \$25.00 per half hour for electronic data). We have processed your request and determined that our cost in providing the requested records to you will be approximately \$ _____. You may pick the records up from me at the above address and be prepared to pay at the time you receive the requested information. If you wish us to mail the requested information, please send a check for this amount to DEQ, Receipts Control, Post Office Box 1104, Richmond, VA 23218. Please make the check payable to the Treasurer of Virginia.

— It has been determined that the cost of fulfilling your request is likely to exceed \$200.00, the agency will require a \$200.00 deposit before processing your request. This deposit will be credited toward the final cost of supplying the requested records.

— We are currently processing your request. As a practical matter, it is not possible for us to provide the requested records within five (5) workdays due to _____. We anticipate, however, that we will be able to do so by _____ (date not to exceed twelve (12) workdays after receipt of request).

— Pursuant to our telephone conversation on _____, we have been unable to process your request as anticipated. As agreed in our discussion, we should be able to release the records by _____.

— The Department has elected to withhold specific records from release. A list of the records withheld and the statutory grounds for withholding is attached. Please find the releasable records attached.

— Your request to visit our office to inspect records subject to VFOIA has been confirmed. The following is the agreed upon date and time:

Date: _____ Time: _____

You may copy any records you would like. Any associated charges will be in accordance with our policy.

— Your payment has been received, and enclosed are the records you

requested.

____ Other: _____

It should also be noted that the VFOIA pertains only to information requested by citizens of the Commonwealth of Virginia or their representatives. Therefore, the agency's compliance with any out-of-state requests is a courtesy, not a legal requirement.

I am the ----- coordinator of records. If you have any questions, please do not hesitate to contact me at -----.

Very truly yours,

VFOIA Coordinator

Attachment D

Form Letters

The following form letters (Attachments D1-D11) have been included as examples of appropriate responses to requests of information. They may be used verbatim, or modified to fit specific situations.

Attachment D has been included as a quick response form for respondents. It is a composite of all the appropriate response options, and may be used by filling in the appropriate information as indicated.

If coordinators are unable to determine the appropriate response or course of action, they should contact the VFOIA Custodian for their respective division/region/office or DEQ's VFOIA Officer.

Letter Identifying Coordinator

(Must be mailed no later than five work days after receipt of request)

—

Dear [requester]:

Thank you for your information request dated [month, day, year].

Your request has been forwarded to [name of coordinator] in DEQ's [regional office, division, section, etc.]. Please feel free to contact [name of coordinator] at [phone number] should you have any questions regarding your request.

It is the policy of the Virginia Department of Environmental Quality to recover the cost of providing information when that cost exceeds \$10.00. For printed information the cost is 10 cents per page. DEQ's basic charge for providing computer data in either paper or electronic format is \$25.00 per half-hour, with any portion of a half-hour being charged the full half-hour rate. In addition, we charge \$5.30/half-hour (\$10.60/hour) staff time involved in accessing, duplicating, supplying, or searching for the requested records.

If it is determined that the cost of fulfilling your request will exceed \$10.00, the agency will process your request and will expect payment at the time the records are picked up. If you would like the requested information mailed, we will do so upon receipt of your check. If it is determined that the cost of fulfilling your request is likely to exceed \$200.00, the agency will require a \$200.00 deposit before processing your request. This deposit will be credited toward the final cost of supplying the requested records.

[Please be advised that the Virginia Freedom of Information Act pertains only to information requested by citizens of the Commonwealth of Virginia. Therefore, our compliance with your request is a courtesy, rather than a legal requirement.]

Should you have any further requests or questions, please do not hesitate to contact me.

Very truly yours,

Letter Releasing Records

(Must be mailed no later than five work days after receipt of request or no longer than twelve work days if preceded by letter in Attachment E4)

—

Dear [requester]:

Thank you for your information request dated [month, day, year].

[We received your check in the amount of [\$--] on [date]. Enclosed are the documents that you requested.]

Should you have any further questions or request, please do not hesitate to contact me.

Very truly yours,

Letter Requesting Cost Reimbursement Before Release of Records

(Must be mailed no later than five work days after receipt of request, or no longer than twelve work days if preceded by letter in Attachment E4)

Dear [requester]:

Thank you for you information request dated [month, day, year].

It is the policy of the Virginia Department of Environmental Quality to recover the cost of providing information when that cost exceeds \$10.00. For printed information the cost is 10 cents per page. DEQ's basic charge for providing computer data in either paper or electronic format is \$25.00 per half-hour, with any portion of a half-hour being charged the full half-hour rate. In addition, we charge \$5.30/half-hour (\$10.60/hour) staff time involved in accessing, duplicating, supplying, or searching for the requested records.

We have determined that the cost of providing you with the requested information will be [\$--]. The requested information will be ready for pickup at [location/time]. At the time of pickup, please have a check for the full amount made out to the Treasurer of Virginia c/o the Virginia Department of Environmental Quality, Receipts Control, Post Office Box 1104, Richmond, VA 23218. If you would like the information mailed, please send a check to the above address.

[Please be advised that the Virginia Freedom of Information Act pertains only to information requested by citizens of the Commonwealth of Virginia. Therefore, our compliance with your request is a courtesy, rather than a legal requirement.]

I am the coordinator of the records that you have requested. Should you have any further questions or requests, please do not hesitate to contact me.

Very truly yours,

c: DEQ Fiscal Office

A COPY OF ATTACHMENT B MUST BE SENT TO DEQ'S FISCAL OFFICE ALONG WITH A COPY OF THIS LETTER.

Letter Invoking Seven Day Extension

(Must be mailed no later than five work days after receipt of request)

Dear [requester]:

Thank you for your information request dated [month, day, year].

We are currently processing your request. As a practical matter, it is not possible for us to provide you with the requested records within five workdays due to ----. However, we anticipate that we will be able to do so by [date not to exceed twelve workdays after initial receipt of the request], in accordance with statutory requirements.

Should you have any further requests or questions, please do not hesitate to contact me.

Very truly yours,

Attachment D5

Letter Requesting Extra Time in Addition to Seven Day Extension

(Must be dated no later than five work days after the initial receipt of the request or no longer than twelve work days if preceded by letter in Attachment D4)

—

Dear [requester]:

Thank you for your information request dated [month, day, year].

Unfortunately, we are unable to release the requested records within twelve workdays due to --. However, as agreed to during our conversation on [month, day, year], we will be able to do so by [date of agreed release].

Should you have any further questions or requests, please do not hesitate to contact me.

Very truly yours,

Attachment D6

Letter Withholding All/Part of the Requested Records

(Must be dated no later the five work days after receipt of the request, or no longer than twelve work days if preceded by letter in Attachment E4)

Dear [requester]:

Thank you for your information request dated [month, day, year].

We have elected to withhold the following records from release on the following statutory grounds:

[record--, applicable code subsection(s)]
*(repeat above as many times as necessary)

[The other records that you requested are enclosed.]

I am the coordinator of the records that you have requested. Should you have any further questions or requests, please contact me.

Very truly yours,

The coordinator must consult with the VFOIA Officer before withholding any information.

Attachment D7

Letter Requesting More Specificity

(Must be dated no later than five workdays after receipt of request)

Dear [requester]:

Thank you for your information request dated [month, day, year].

Unfortunately, your request is not defined precisely enough for us to interpret the specific records that you desire. In order to assist us in fulfilling your request, please rephrase your request with greater specificity. Once your new request has been received, we will process it in accordance with the procedures set forth in the Virginia Freedom of Information Act.

Should you have any further questions or requests, please do not hesitate to contact me.

Very truly yours,

Attachment D8

Letter Confirming Appointment to Inspect Records

(Must be mailed no later than five work days after receipt of request, or no longer than twelve work days if preceded by letter in Attachment E4)

—

Thank you for your information request dated [month, day, year].

This letter is to confirm our conversation of [month, day, year]. During our conversation we agreed that you would inspect the requested records on the following date, place and time: [date, place, time]. If you wish us to provide you with copies of any of the records found during your inspection, we will be happy to do so according to our reimbursement policy.

It is the policy of the Virginia Department of Environmental Quality to recover the cost of providing information when that cost exceeds \$10.00. For printed information the cost is 10 cents per page. DEQ's basic charge for providing computer data in either paper or electronic format is \$25.00 per half-hour, with any portion of a half-hour being charged the full half-hour rate. In addition, we charge \$5.30/half-hour (\$10.60/hour) staff time involved in accessing, duplicating, supplying, or searching for the requested records.

Copies will be provided upon receipt of a check for reimbursement.

[Please be advised that the Virginia Freedom of Information Act pertains only to information requested by citizens of the Commonwealth of Virginia. Therefore, our compliance with your request is a courtesy, rather than a legal requirement.]

I am the coordinator of the records that you have requested. If you have any questions, please contact me.

Very truly yours,

Attachment D9

Letter Requesting Deposit Before Processing Request

(Must be mailed no later than five work days after receipt of request)

—

Dear [requester]:

Thank you for you information request dated [month, day, year].

It has been determined that the cost of fulfilling your request is likely to exceed \$200.00. The agency will require a \$200.00 deposit before processing your request. This deposit will be credited toward the final cost of supplying the requested records. Please send a check for \$200.00 made out to the Treasurer of Virginia c/o the Virginia Department of Environmental Quality, Receipts Control, Post Office Box 1104, Richmond, VA 23218.

It is the policy of the Virginia Department of Environmental Quality to recover the cost of providing information when that cost exceeds \$10.00. For printed information the cost is 10 cents per page. DEQ's basic charge for providing computer data in either paper or electronic format is \$25.00 per half-hour, with any portion of a half-hour being charged the full half-hour rate. In addition, we charge \$5.30/half-hour (\$10.60/hour) staff time involved in accessing, duplicating, supplying, or searching for the requested records.

[Please be advised that the Virginia Freedom of Information Act pertains only to information requested by citizens of the Commonwealth of Virginia. Therefore, our compliance with your request is a courtesy, rather than a legal requirement.]

I am the coordinator of the records that you have requested. Should you have any further questions or requests, please do not hesitate to contact me.

Very truly yours,

c: DEQ Fiscal Office

Attachment D10

Letter Releasing Records When There Is No Charge

(Must be mailed no later than five work days after receipt of request, or no longer than twelve work days if preceded by letter in Attachment E4)

—

Dear [requester]:

Thank you for you information request dated [month, day, year].

It is the policy of the Virginia Department of Environmental Quality to recover the cost of providing information when that cost exceeds \$10.00. For printed information the cost is 10 cents per page. DEQ's basic charge for providing computer data in either paper or electronic format is \$25.00 per half-hour, with any portion of a half-hour being charged the full half-hour rate. In addition, we charge \$5.30/half-hour (\$10.60/hour) staff time involved in accessing, duplicating, supplying, or searching for the requested records.

[Please be advised that the Virginia Freedom of Information Act pertains only to information requested by citizens of the Commonwealth of Virginia. Therefore, our compliance with your request is a courtesy, rather than a legal requirement.]

I am the coordinator of the records that you have requested. Should you have any further questions or requests, please do not hesitate to contact me.

Very truly yours,

Attachment D11

Letter Notifying Requester that Records Do Not Exist

(Must be dated no later than five workdays after receipt of request)

—

Dear [requester]:

Thank you for your information request dated [month, day, year].

After searching our files, we have determined that the information that you have requested cannot be found or does not exist in the records of the Department of Environmental Quality. (If known, include where the records can be found and a contact)

Should you have any further questions or requests, please do not hesitate to contact me.

Very truly yours,

CONFIDENTIALITY OF ENFORCEMENT DOCUMENTS

The Virginia Freedom of Information Act ("FOIA") provides that certain enforcement records of DEQ, the State Water Control Board, the State Air Pollution Control Board, and the Virginia Waste Management Board (collectively, "DEQ Records") are exempted from mandatory disclosure under FOIA, as follows:

Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents. Va. Code § 2.2-3705.7(16)

A. Active Federal Enforcement Actions

Federal documents pertaining to a federal enforcement action and in the possession of DEQ are not subject to disclosure under FOIA if (1) the enforcement action is active (*i.e.*, ongoing) and (2) the documents are considered confidential under federal law. Whether the documents are considered confidential under federal law is based upon their designation as such by the federal agency or its counsel providing the documents. State documents and data which are otherwise subject to disclosure under FOIA are *not* made subject to the Active Federal Enforcement Action exemption by virtue of their use or potential use in a federal action.

B. DEQ Enforcement Strategy Documents

DEQ Records related to "enforcement strategies, including proposed sanctions for enforcement actions," are exempt from mandatory disclosure under FOIA up until the time a "proposed sanction resulting from an investigation has been proposed" to the Director of DEQ. For purposes of this statute, "sanction" refers to any injunctive relief, revocation of a permit or other authorization, civil charges, and monetary penalties authorized by statute which may be imposed against a person or facility in an enforcement action, administrative or judicial. A sanction is "proposed to the Director of DEQ" or his designee as follows: (1) at the presentation of a consent order for final approval and sign-off; (2) at the presentation for final approval and sign-off of a proposed administrative order resulting from an adversarial administrative proceeding like a formal hearing or informal fact-finding; and (3) in cases where an order must go through

public comment and/or be issued by one of the boards, when the Director's designee approves the order for public comment and/or for presentation to the appropriate board. *After* the sanction is presented to the Director, the enforcement strategy documents are available under FOIA.

Enforcement strategy documents exempt from FOIA under this provision include, but may not be limited to: enforcement recommendation and plan documents ("ERPs"); memoranda, emails and other documents dedicated to the discussion of appropriate enforcement strategy and its progress; documents and proposals drafted and/or received in the course of enforcement action settlement negotiations and pertaining directly thereto; draft orders, including draft findings of fact and conclusions of law; and documents prepared as part of the active prosecution of adversarial administrative and judicial enforcement actions. Documents (including drafts thereof) expressly or implicitly *not included* in the Enforcement Strategy exemption include warning letters, NOVs, inspection reports, and any other document, information or compilation which is created in DEQ's ordinary course of business.